

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB:7: [REDACTED]:GL-141938-02
[REDACTED]

date: AUG 08 2002

to: [REDACTED], Revenue Officer [REDACTED]

thru: Group Manager [REDACTED]

from: [REDACTED], Attorney (SB/SE)

subject: Proposed Seizure of Residential Real Property

TP: [REDACTED], Inc.; EIN: [REDACTED]

Reference is made to our conference held on August 2, 2002, that was also attended by [REDACTED] and [REDACTED], to discuss the above-subject collection action. As we discussed, prior to initiating the contemplated seizure action, the issue of whether the requirements of I.R.C. § 6334(e)(1) were applicable to the subject collection action was to be considered by this office. After reviewing the facts and circumstances involved in this case, we generally conclude that the subject real property does not constitute the taxpayer's "principal residence" and, therefore, § 6334(e) is not implicated herein. However, pursuant to IRM § 5.10.2.14(6), please ensure that you have obtained the written approval of the area director, or his duly delegated representative, for the proposed real property seizure.

Factually, [REDACTED], Inc. ([REDACTED]) is a [REDACTED] corporation involved in the [REDACTED]. It owns [REDACTED] adjacent leasehold apartments located in the [REDACTED] at [REDACTED] in downtown [REDACTED], as well as a [REDACTED] property in [REDACTED]. All of these properties are essentially unencumbered, except for the federal tax liens for delinquent employment and corporate income taxes. The aggregate delinquent balance due from the taxpayer is approximately \$[REDACTED]. The taxpayer's principal officer and [REDACTED]% shareholder is [REDACTED]. [REDACTED] also has delinquent assessments for individual income taxes in the approximate aggregate amount of \$[REDACTED].

Previously, in attempts to secure information from both [REDACTED] and [REDACTED], separate collection summonses were served on [REDACTED] at the [REDACTED] address. In a subsequent summons enforcement action in U.S. District Court, the Service alleged that the subject summonses were served on [REDACTED] at his "last and usual place of abode." Apparently, the taxpayer's two apartments at the [REDACTED] are

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used not only as a business location but also as █'s residence. The █ is rented out by the taxpayer to an unrelated party. Currently, you intend to administratively seize all three properties and sell them to satisfy the delinquent balances of █.

Statutorily, I.R.C. §§ 6334(a)(13) and 6334(e) exempts: a) **any** residential property from levy if the delinquent balance is \$5,000.00 or less and b) the "principal residence of the taxpayer," in the absence of a written approval from "a judge or magistrate of a district court of the United States." For purposes of § 6334(e), the "principal residence of the taxpayer" is defined under the provisions of § 121 as follows:

(a) *Principal residence.* The term "principal residence" has the same meaning as in section 1034 (relating to sale or exchange of residence) and the regulations thereunder (see paragraph (c)(3) of §1.1034-1).

Treas. Reg. § §1.121-3.

Further, section 1034 provides, in part, as follows:

(3) *Property used by the taxpayer as his principal residence.*--(i) Whether or not property is used by the taxpayer as his residence, and whether or not property is used by the taxpayer as his principal residence (in the case of a taxpayer using more than one property as a residence), depends upon all the facts and circumstances in each case, including the good faith of the taxpayer.

In reviewing the annotated cases interpreting the provisions of §§ 121 and 1034 pertaining to taxpayers' "principal residences," we have not been able to find any cases involving a corporation. Although neither statute specifically restricts their application to individual taxpayers, as a practical matter it would appear that these provisions are limited to corporeal entities. Similarly, we believe that the restriction on the seizures of principal residences contained in §§ 6334(a)(13) and (e) applies solely to individual taxpayers. Therefore, the instant seizure of █'s real property, notwithstanding █'s use of one of the condominiums as his apparent abode, should not be affected by the statutory restrictions.

Administratively, however, the written approval of the Area Director is required prior to all seizures of any residential property, absent a jeopardy determination:

The following seizures require approval by the area director unless collection of the tax is in jeopardy:

...

All personal residences, including those requiring judicial approval; ...

IRM § 5.10.2.14.

If you have any questions regarding, or wish to further discuss, the foregoing matter, please contact me at ext. [REDACTED].

[REDACTED]
Associate Area Counsel
(Small Business/Self-Employed)

By: [REDACTED]

Attorney (SB/SE)

cc: [REDACTED], SPf Advisor, [REDACTED]